

Issues and Answers to Questions about the 9/30/2006 Sunset **Date of HUD's Mark to Market Restructuring Tools**

Background: Congress passed the MAHRA Statute in 1997, which contained the various restructuring tools used by the Office of Affordable Housing Preservation (OAHP) and its predecessor OMHAR to complete over 2,800 M2M transactions over the last 7 years. The Mark to Market Extension Act of 2001 extended those authorities until September 30, 2006 (Sunset).

1. What will be the critical dates for owners with expiring contracts regarding the Sunset of MAHRA.

In order for OAHP to continue a debt restructuring post Sunset, the owner must have a "binding commitment" before the September 30, 2006. The following constitute binding commitments which would allow OAHP to continue a debt restructuring post Sunset:

- A 514 Interim Contract fully executed before September 30, 2006, or
- The new Option 3B on the Owner Election Form (which requires the signature of both the Owner and HUD) fully executed prior to September 30, 2006.

2. Which properties are the most effected by the Sunset date?

- 1 Watch List properties
- 2 LITE transactions

After September 30, 2006, OAHP will no longer be able to take these properties back into the M2M Program for debt restructuring. Please note that:

- 1 *An Owner who elects the new Option 3B can be converted to a LITE post Sunset, but an Owner who elects Option 3A cannot be converted into a FULL post Sunset.*
- 2 *Owners with properties in the middle of a 5- year HAP contract, which are now above market or may be above market, will have to agree to enter the M2M Program before 9/30/06 by signing an Interim Mark to Market Contract and having funding available so that HUD can sign it as well.*

3. What happens if I wait until after October 1, 2006 to obtain a Rent Comparability Study and find out I am above market after Sunset?

Under HUD Regulations, the properties rents will be marked to market and there will be no restructuring tools to adjust for the loss of revenues. Put another way, OAHP's debt restructuring authority sunsets with the MAHRA statute.

3. Is there a possibility that Congress will extend the restructuring tools again?

While there is always a chance that MAHRA will be extended, there is currently no such legislation on Capital Hill.

- 4. In 2004, HUD made OAHP a permanent organization under the Assistant Secretary and FHA Commissioner, doesn't that indicate they want to make the Program OAHP administers permanent?**

Not necessarily. The Office of Affordable Housing Preservation was created in Housing because the Department wanted to retain OMHAR's expertise and abilities to handle a number of other programs and projects in Housing.

- 5. If a property is state or local bond financed and the lockout from refinancing the existing mortgage is beyond sunset, can the property enter M2M?**

No, OAHP's debt restructuring authority ends on September 30, 2006 regardless of the lockout.

- 6. If a previously closed restructuring is part of a Transfer of Physical Assets (TPA) from the existing owner to a Qualified Non Profit, how is the transfer affected by Sunset?**

The rules governing TPAs continue post Sunset.

- 7. How are Out-year Contracts, which have their first post MAHRA expiration date after sunset impacted?**

Just like properties with renewal contracts, the Owners must enter the M2M Program by executing a 514 Interim Contract prior to September 30, 2006.

- 8. If I have other questions about Sunset and it's affects on a property or group of properties, how can I get them answered?**

For further information, contact: